

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN ASSEMBLY JUNE 8, 2006

AMENDED IN SENATE APRIL 26, 2006

AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1609**

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**Introduced by Senator Simitian**

(Principal coauthor: Assembly Member Wolk)

February 24, 2006

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An act to amend Sections 1632, 1923.2, and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1609, as amended, Simitian. Reverse mortgages: annuities.

Existing state and federal law regulate the activities of financial institutions. Existing state law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement.

This bill would prohibit a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan. The bill would prohibit a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower's

right to rescind. The bill would, among other things, require a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and would prohibit a lender from accepting a full and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower had received this counseling. The bill would make changes to the disclosure notice provided to an applicant for a reverse mortgage and would require a lender to provide a specified list of independent loan counselors.

Existing law requires any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean in the course of entering into specified contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated.

This bill would include contracts for reverse mortgages within these provisions. The bill would require a lender to ensure compliance with these provisions in the case of brokered loans.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1632 of the Civil Code is amended to  
2 read:  
3 1632. (a) The Legislature hereby finds and declares all of the  
4 following:  
5 (1) This section was enacted in 1976 to increase consumer  
6 information and protections for the state's sizeable and growing  
7 Spanish-speaking population.  
8 (2) Since 1976, the state's population has become increasingly  
9 diverse and the number of Californians who speak languages  
10 other than English as their primary language at home has  
11 increased dramatically.  
12 (3) According to data from the United States Census of 2000,  
13 of the more than 12 million Californians who speak a language  
14 other than English in the home, approximately 4.3 million speak  
15 an Asian dialect or another language other than Spanish. The top  
16 five languages other than English most widely spoken by  
17 Californians in their homes are Spanish, Chinese, Tagalog,

1 Vietnamese, and Korean. Together, these languages are spoken  
2 by approximately 83 percent of all Californians who speak a  
3 language other than English in their homes.

4 (b) Any person engaged in a trade or business who negotiates  
5 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,  
6 orally or in writing, in the course of entering into any of the  
7 following, shall deliver to the other party to the contract or  
8 agreement and prior to the execution thereof, a translation of the  
9 contract or agreement in the language in which the contract or  
10 agreement was negotiated, which includes a translation of every  
11 term and condition in that contract or agreement:

12 (1) A contract or agreement subject to the provisions of Title 2  
13 (commencing with Section 1801) of, and Chapter 2b  
14 (commencing with Section 2981) and Chapter 2d (commencing  
15 with Section 2985.7) of Title 14 of, Part 4 of Division 3.

16 (2) A loan or extension of credit secured other than by real  
17 property, or unsecured, for use primarily for personal, family or  
18 household purposes.

19 (3) A lease, sublease, rental contract or agreement, or other  
20 term of tenancy contract or agreement, for a period of longer than  
21 one month, covering a dwelling, an apartment, or mobilehome, or  
22 other dwelling unit normally occupied as a residence.

23 (4) Notwithstanding paragraph (2), a loan or extension of  
24 credit for use primarily for personal, family or household  
25 purposes where the loan or extension of credit is subject to the  
26 provisions of Article 7 (commencing with Section 10240) of  
27 Chapter 3 of Part 1 of Division 4 of the Business and Professions  
28 Code, or Division 7 (commencing with Section 18000), or  
29 Division 9 (commencing with Section 22000) of the Financial  
30 Code.

31 (5) Notwithstanding paragraph (2), a reverse mortgage as  
32 described in Chapter 8 (commencing with Section 1923) of Title  
33 4 of Part 4 of Division 3.

34 (6) A contract or agreement, containing a statement of fees or  
35 charges, entered into for the purpose of obtaining legal services,  
36 when the person who is engaged in business is currently licensed  
37 to practice law pursuant to Chapter 4 (commencing with Section  
38 6000) of Division 3 of the Business and Professions Code.

39 (c) Notwithstanding subdivision (b), for a loan subject to this  
40 part and to Article 7 (commencing with Section 10240) of

1 Chapter 3 of Part 1 of Division 4 of the Business and Professions  
2 Code, the delivery of a translation of the statement to the  
3 borrower required by Section 10240 of the Business and  
4 Professions Code in any of the languages specified in subdivision  
5 (b) in which the contract or agreement was negotiated, is in  
6 compliance with subdivision (b).

7 (d) At the time and place where a lease, sublease, or rental  
8 contract or agreement described in subdivision (b) is executed,  
9 notice in any of the languages specified in subdivision (b) in  
10 which the contract or agreement was negotiated shall be provided  
11 to the lessee or tenant.

12 (e) Provision by a supervised financial organization of a  
13 translation of the disclosures required by Regulation M or  
14 Regulation Z, and, if applicable, Division 7 (commencing with  
15 Section 18000) or Division 9 (commencing with Section 22000)  
16 of the Financial Code in any of the languages specified in  
17 subdivision (b) in which the contract or agreement was  
18 negotiated, prior to the execution of the contract or agreement,  
19 shall also be deemed in compliance with the requirements of  
20 subdivision (b) with regard to the original contract or agreement.

21 (1) “Regulation M” and “Regulation Z” mean any rule,  
22 regulation, or interpretation promulgated by the Board of  
23 Governors of the Federal Reserve System and any interpretation  
24 or approval issued by an official or employee duly authorized by  
25 the board to issue interpretations or approvals dealing with,  
26 respectively, consumer leasing or consumer lending, pursuant to  
27 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.  
28 1601 et seq.).

29 (2) As used in this section, “supervised financial organization”  
30 means a bank, savings association as defined in Section 5102 of  
31 the Financial Code, credit union, or holding company, affiliate,  
32 or subsidiary thereof, or any person subject to Article 7  
33 (commencing with Section 10240) of Chapter 3 of Part 1 of  
34 Division 4 of the Business and Professions Code, or Division 7  
35 (commencing with Section 18000) or Division 9 (commencing  
36 with Section 22000) of the Financial Code.

37 (f) At the time and place where a contract or agreement  
38 described in paragraph (1) or (2) of subdivision (b) is executed, a  
39 notice in any of the languages specified in subdivision (b) in  
40 which the contract or agreement was negotiated shall be

1 conspicuously displayed to the effect that the person described in  
2 subdivision (b) is required to provide a contract or agreement in  
3 the language in which the contract or agreement was negotiated,  
4 or a translation of the disclosures required by law in the language  
5 in which the contract or agreement was negotiated, as the case  
6 may be. If a person described in subdivision (b) does business at  
7 more than one location or branch, the requirements of this section  
8 shall apply only with respect to the location or branch at which  
9 the language in which the contract or agreement was negotiated  
10 is used.

11 (g) The term “contract” or “agreement,” as used in this  
12 section, means the document creating the rights and obligations  
13 of the parties and includes any subsequent document making  
14 substantial changes in the rights and obligations of the parties.  
15 The term “contract” or “agreement” does not include any  
16 subsequent documents authorized or contemplated by the original  
17 document such as periodic statements, sales slips or invoices  
18 representing purchases made pursuant to a credit card agreement,  
19 a retail installment contract or account or other revolving sales or  
20 loan account, memoranda of purchases in an add-on sale, or  
21 refinancing of a purchase as provided by, or pursuant to, the  
22 original document.

23 The term “contract” or “agreement” does not include a home  
24 improvement contract as defined in Sections 7151.2 and 7159 of  
25 the Business and Professions Code, nor does it include plans,  
26 specifications, description of work to be done and materials to be  
27 used, or collateral security taken or to be taken for the retail  
28 buyer’s obligation contained in a contract for the installation of  
29 goods by a contractor licensed pursuant to Chapter 9  
30 (commencing with Section 7000) of Division 3 of the Business  
31 and Professions Code, if the home improvement contract or  
32 installation contract is otherwise a part of a contract described in  
33 subdivision (b).

34 Matters ordinarily incorporated by reference in contracts or  
35 agreements as described in paragraph (3) of subdivision (b),  
36 including, but not limited to, rules and regulations governing a  
37 tenancy and inventories of furnishings to be provided by the  
38 person described in subdivision (b), are not included in the term  
39 “contract” or “agreement.”

1 (h) This section does not apply to any person engaged in a  
2 trade or business who negotiates primarily in a language other  
3 than English, as described by subdivision (b), if the party with  
4 whom he or she is negotiating is a buyer of goods or services, or  
5 receives a loan or extension of credit, or enters an agreement  
6 obligating himself or herself as a tenant, lessee, or sublessee, or  
7 similarly obligates himself or herself by contract or lease, and the  
8 party negotiates the terms of the contract, lease, or other  
9 obligation through his or her own interpreter.

10 As used in this subdivision, “his or her own interpreter” means  
11 a person, not a minor, able to speak fluently and read with full  
12 understanding both the English language and any of the  
13 languages specified in subdivision (b) in which the contract or  
14 agreement was negotiated, and who is not employed by, or  
15 whose service is made available through, the person engaged in  
16 the trade or business.

17 (i) Notwithstanding subdivision (b), a translation may retain  
18 the following elements of the executed English-language contract  
19 or agreement without translation: names and titles of individuals  
20 and other persons, addresses, brand names, trade names,  
21 trademarks, registered service marks, full or abbreviated  
22 designations of the make and model of goods or services,  
23 alphanumeric codes, numerals, dollar amounts expressed in  
24 numerals, dates, and individual words or expressions having no  
25 generally accepted non-English translation. It is permissible, but  
26 not required, that this translation be signed.

27 (j) The terms of the contract or agreement which is executed in  
28 the English language shall determine the rights and obligations of  
29 the parties. However, the translation of the contract or the  
30 disclosures required by subdivision (e) in any of the languages  
31 specified in subdivision (b) in which the contract or agreement  
32 was negotiated shall be admissible in evidence only to show that  
33 no contract was entered into because of a substantial difference  
34 in the material terms and conditions of the contract and the  
35 translation.

36 (k) Upon a failure to comply with the provisions of this  
37 section, the person aggrieved may rescind the contract or  
38 agreement in the manner provided by this chapter. When the  
39 contract for a consumer credit sale or consumer lease which has  
40 been sold and assigned to a financial institution is rescinded

1 pursuant to this subdivision, the consumer shall make restitution  
2 to and have restitution made by the person with whom he or she  
3 made the contract, and shall give notice of rescission to the  
4 assignee. Notwithstanding that the contract was assigned without  
5 recourse, the assignment shall be deemed rescinded and the  
6 assignor shall promptly repurchase the contract from the  
7 assignee.

8 SEC. 2. Section 1923.2 of the Civil Code is amended to read:

9 1923.2. A reverse mortgage loan shall comply with all of the  
10 following requirements:

11 (a) Prepayment, in whole or in part, shall be permitted without  
12 penalty at any time during the term of the reverse mortgage loan.  
13 For the purposes of this section, penalty does not include any  
14 fees, payments, or other charges that would have otherwise been  
15 due upon the reverse mortgage being due and payable.

16 (b) A reverse mortgage loan may provide for a fixed or  
17 adjustable interest rate or combination thereof, including  
18 compound interest, and may also provide for interest that is  
19 contingent on the value of the property upon execution of the  
20 loan or at maturity, or on changes in value between closing and  
21 maturity.

22 (c) A reverse mortgage may include costs and fees that are  
23 charged by the lender, or the lender's designee, originator, or  
24 servicer, including costs and fees charged upon execution of the  
25 loan, on a periodic basis, or upon maturity.

26 (d) If a reverse mortgage loan provides for periodic advances  
27 to a borrower, these advances shall not be reduced in amount or  
28 number based on any adjustment in the interest rate.

29 (e) A lender who fails to make loan advances as required in  
30 the loan documents, and fails to cure an actual default after  
31 notice as specified in the loan documents, shall forfeit to the  
32 borrower treble the amount wrongfully withheld plus interest at  
33 the legal rate.

34 (f) The reverse mortgage loan may become due and payable  
35 upon the occurrence of any one of the following events:

36 (1) The home securing the loan is sold or title to the home is  
37 otherwise transferred.

38 (2) All borrowers cease occupying the home as a principal  
39 residence, except as provided in subdivision (h).

1 (3) Any fixed maturity date agreed to by the lender and the  
2 borrower occurs.

3 (4) An event occurs which is specified in the loan documents  
4 and which jeopardizes the lender's security.

5 (g) Repayment of the reverse mortgage loan shall be subject to  
6 the following additional conditions:

7 (1) Temporary absences from the home not exceeding 60  
8 consecutive days shall not cause the mortgage to become due and  
9 payable.

10 (2) Extended absences from the home exceeding 60  
11 consecutive days, but less than one year, shall not cause the  
12 mortgage to become due and payable if the borrower has taken  
13 prior action which secures and protects the home in a manner  
14 satisfactory to the lender, as specified in the loan documents.

15 (3) The lender's right to collect reverse mortgage loan  
16 proceeds shall be subject to the applicable statute of limitations  
17 for written loan contracts. Notwithstanding any other provision  
18 of law, the statute of limitations shall commence on the date that  
19 the reverse mortgage loan becomes due and payable as provided  
20 in the loan agreement.

21 (4) The lender shall prominently disclose in the loan  
22 agreement any interest rate or other fees to be charged during the  
23 period that commences on the date that the reverse mortgage loan  
24 becomes due and payable, and that ends when repayment in full  
25 is made.

26 (h) The first page of any deed of trust securing a reverse  
27 mortgage loan shall contain the following statement in 10-point  
28 boldface type: "This deed of trust secures a reverse mortgage  
29 loan."

30 (i) A lender shall not require an applicant for a reverse  
31 mortgage to purchase an annuity as a condition of obtaining a  
32 reverse mortgage loan. A reverse mortgage lender or a broker  
33 arranging a reverse mortgage loan shall not:

34 (1) Offer an annuity to the borrower prior to the closing of the  
35 reverse mortgage or before the expiration of the right of the  
36 borrower to rescind the reverse mortgage agreement.

37 (2) Refer the borrower to anyone for the purchase of an  
38 annuity prior to the closing of the reverse mortgage or before the  
39 expiration of the right of the borrower to rescind the reverse  
40 mortgage agreement.



1 (j) Prior to accepting a final and complete application for a  
2 reverse mortgage loan or assessing any fees, a lender shall refer  
3 the prospective borrower to a housing counseling agency  
4 approved by the United States Department of Housing and Urban  
5 Development for counseling. The counseling shall meet the  
6 standards and requirements established by the United States  
7 Department of Housing and Urban Development for reverse  
8 mortgage ~~lenders~~ *counseling*. The lender shall provide the  
9 borrower with a list of at least five housing counseling agencies  
10 approved by the United States Department of Housing and Urban  
11 Development, including at least two agencies that can provide  
12 counseling by telephone.

13 (k) A lender shall not accept a final and complete application  
14 for a reverse mortgage loan from a prospective applicant or  
15 assess any fees upon a prospective applicant without first  
16 receiving a certification from the applicant or the applicant's  
17 authorized representative that the applicant has received  
18 counseling from an agency as described in subdivision (j). The  
19 certification shall be signed by the borrower and the agency  
20 counselor, and shall include the date of the counseling and the  
21 name, address, and telephone number of both the counselor and  
22 the borrower. Electronic facsimile copy of the housing  
23 counseling certification satisfies the requirements of this  
24 subdivision. The lender shall maintain the certification in an  
25 accurate, reproducible, and accessible format for the term of the  
26 reverse mortgage.

27 (l) A lender shall not make a reverse mortgage loan without  
28 first complying with, or in the case of brokered loans ensuring  
29 compliance with, the requirements of Section 1632, if applicable.

30 SEC. 3. Section 1923.5 of the Civil Code is amended to read:

31 1923.5. No reverse mortgage loan application shall be taken  
32 by a lender unless the loan applicant has received from the lender  
33 the following plain language statement in conspicuous 16-point  
34 type or larger, advising the prospective borrower about  
35 counseling prior to obtaining the reverse mortgage loan:

36  
37

IMPORTANT NOTICE

1 TO REVERSE MORTGAGE LOAN APPLICANT  
2  
3 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL  
4 TRANSACTION THAT PROVIDES A MEANS OF USING  
5 THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR  
6 THE VALUE OF YOUR HOME, AS A SOURCE OF  
7 ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A  
8 REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING  
9 LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT  
10 LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND  
11 YOUR ESTATE. IT IS THEREFORE IMPORTANT TO  
12 UNDERSTAND THE TERMS OF THE REVERSE  
13 MORTGAGE AND ITS EFFECT. BEFORE ENTERING INTO  
14 THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT  
15 WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF  
16 APPROVED COUNSELORS WILL BE PROVIDED TO YOU  
17 BY THE LENDER.  
18 YOU MAY ALSO WANT TO DISCUSS YOUR DECISION  
19 WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU  
20 RELY FOR FINANCIAL ADVICE.

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